

REMARKS

Reconsideration of the captioned application as amended herewith is respectfully requested.

This Response is responsive to the Office Action mailed 30 April 2008 ("Office Action") and the Notice of Appeal submitted on 16 July 2008 ("Notice") and is filed concurrently with a Petition for a One (1) Month Extension, which would extend the period of response from 16 September 2008 to 16 October 2008. This Response is also filed concurrently with a Request for Continued Examination ("RCE") in lieu of filing an Appeal Brief in response to the Office Action and Notice.

The Office Action:

- (1) Rejected claims 1, 6, 8, and 10 under 35 USC 102(e) as being anticipated by United States Patent No. 6,409,881 to Jaschinski ("Jaschinski");
- (2) Rejected claim 11 under 35 USC 103(a) as being unpatentable over Jaschinski in view of United States Patent No. 3,032,182 to Bechtold ("Bechtold");
- (3) Rejected claims 5, 7, and 13 under 35 USC 103(a) as being unpatentable over Jaschinski;
- (4) Rejected claims 1, 9, and 16 - 18 under 35 USC 103(a) as being unpatentable over GB 2,314,842 to Watt, et al., ("Watt") in view of Jaschinski.

Claims 1 and 13 were clarified in order to highlight the patentable feature that the material "compris[es] a complex of an oxidized regenerated cellulose with silver, wherein the material comprises from about 0.1wt.% to about 2 wt% of the complex." Support for this amendment may be found in the Specification as originally filed at, for example, page 2, lines 14 - 17 and 19 - 31, and page 20, lines 14 - 21, and as such this amendment does not introduce new matter into the application.

Claims 2 - 4, 7 - 9, 12, and 14 - 15 are cancelled. Claims 1, 5, 6, 10, 11, 13, and 16 - 18 remaining pending after entry of this Response.

I. The rejection of claims 1, 6, 8, and 10, under 35 USC §102(e) as being anticipated by Jaschinski should be withdrawn.

Claims 1, 6, 8, and 10 stand rejected under 35 USC §102(e), as being allegedly unpatentable over Jaschinski. Applicants respectfully disagree for the reasons that follow.

Applicants respectfully submit that the rejection of claim 8 should be withdrawn in view of the cancellation of claim 8 herein.

Claim 1, as clarified herein, sets forth that the “wound dressing material compris[es] a complex of an oxidized regenerated cellulose with silver.” (emphasis added) Applicants respectfully submit that the Office Action has failed to show where Jaschinski discloses or suggests the use of oxidized regenerated cellulose.

Rejections under 35 USC §102 are proper only when the claimed subject matter is identically disclosed or described in the prior art. In re Marshall, 198 USPQ 344 (CCPA 1978). In other words, to constitute an anticipation, all material elements recited in a claim must be found in one unit of prior art. Id. The exclusion of a claimed element from a prior art reference is enough to negate anticipation under 35 USC §102 by that reference. Atlas Powder Co. v. F.I. Du Pont de Nemours & Co., 224 USPQ 409 (Fed. Cir. 1984).

Therefore, because Jaschinski fails to disclose or suggest at least one element of independent claim 1, i.e., oxidized regenerated cellulose, Applicants respectfully submit that that the rejection of independent claim 1, and claims 6 and 10 which are dependent therefrom and thus incorporate all of the limitations therein, under 35 USC §102(e) as anticipated by Jaschinski has been overcome and should be withdrawn.

**II. The rejection of claim 11 under 35 USC §103(a)
as being unpatentable over Jaschinski in view of Bechtold should be withdrawn.**

Claim 11 stands rejected under 35 USC §103(a), as being allegedly unpatentable over Jaschinski in view of Bechtold. Applicants respectfully disagree for the reasons that follow.

Claim 11 is dependent upon independent Claim 1 and thus incorporates all of its limitations therein. Claim 1, as clarified herein, sets forth that the “wound dressing material compris[es] a complex of an oxidized regenerated cellulose with silver.” (emphasis added)

Applicants respectfully submit that the Office Action has failed to show where Jaschinski discloses or suggests the use of oxidized regenerated cellulose. The Office Action has further failed to show where Bechtold discloses or suggests the use of oxidized regenerated cellulose.

Therefore, even if one were to combine Jaschinski with Bechtold as proposed in the Office Action, the resulting combination would still lack the particular claimed oxidized regenerated cellulose in the wound dressing material. Therefore, Applicants respectfully submit that that the rejection of claim 11 under 35 USC §103 as being unpatentable over Jaschinski in view of Bechtold has been overcome and should be withdrawn.

II. The rejection of claims 5, 7, and 13 under 35 USC §103(a)

as being unpatentable over Jaschinski should be withdrawn.

Claims 5, 7, and 13 stand rejected under 35 USC §103(a), as being allegedly unpatentable over Jaschinski. Applicants respectfully disagree for the reasons that follow.

Applicants respectfully submit that the rejection of claim 7 should be withdrawn in view of the cancellation of claim 7 herein.

Claim 5 is dependent upon independent Claim 1 and thus incorporate all of its limitations therein. Claim 1, as clarified herein, sets forth that the “wound dressing material compris[es] a complex of an oxidized regenerated cellulose with silver.” (emphasis added) Similarly, claim 13 is directed to “[a] method for treating venous ulcers, decubitis ulcers or diabetic ulcers, comprising applying a wound dressing material directly to the surface of the wound; wherein the wound dressing material comprises a complex of oxidized regenerated cellulose with silver.” (emphasis added). As set forth above, Applicants respectfully submit that the Office Action has failed to show where Jaschinski discloses or suggests the use of oxidized regenerated cellulose. Therefore, Applicants respectfully submit that that the rejection of claims 5 and 13 under 35 USC §103 as being unpatentable over Jaschinski has been overcome and should be withdrawn.

III. The rejection of claims 1, 9, and 16 - 18 under 35 USC §103(a)

as being unpatentable over Watt in view of Jaschinski should be withdrawn.

Claims 1, 9, and 16 - 18 stand rejected under 35 USC §103(a), as being allegedly unpatentable over Watt in view of Jaschinski. As acknowledged in the Office Action, “Watt et al. fail to disclose that the complex comprises silver from about 0.1% to above 3 wt. %” However, the Office Action alleged that “it would have been obvious... to treat the wound dressing material of Watt et al. with a silver based antibacterial agent in order to prevent bacterial growth.” Applicants respectfully disagree for the reasons that follow.

Applicants respectfully submit that the rejection of claim 9 should be withdrawn in view of the cancellation of claim 9 herein.

Assuming *arguendo* that there was some reason to combine Watt with Jaschinski or to modify one of them in light of the other,- and Applicants do not concede that such reason exists – the combination of these references would still not disclose Applicants' claim 1 invention. Combining the Watt and Jaschinski references as in the Office Action would not yield a device having specifically "from about 0.1wt% to about 2 wt% of the complex" as claimed. Moreover, in the Specification on page 20, lines 14 – 21, Applicants further demonstrated that within this range of the complex, the resultant device exhibited unexpectedly superior properties. In particular, the device

strongly promote[d] fibroblast proliferation. This effect was [at] least double that observed with collagen/ORC, alone which has been shown previously to stimulate cell proliferation. This stimulatory effect was apparently limited to lower concentrations of silver-ORC, as concentrations of 2% and above were detrimental to cell growth.

(emphasis added). None of the cited references disclose or suggest the claimed range of the complex, let alone disclose or suggest that at lower ranges of the complex, i.e., "from about 0.1 % to about 2 wt%," the wound dressing material had fibroblast proliferation properties superior to those possessed by wound dressing materials containing greater amounts of the complex. Therefore, Applicants respectfully submit that that the rejection of independent claim 1, and claims 16 - 18 which are dependent thereon, under 35 USC §103 as being unpatentable over Watt in view of Jaschinski has been overcome and should be withdrawn.

Conclusion

It is submitted that the foregoing remarks place the case in condition for allowance. A notice to that effect is earnestly solicited.

Respectfully submitted,
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